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FIRST GENERAL COUNSEL'S REPORT

CELA

MUR 6761

DATE RECEIVED: November 5, 2013

DATE ACTIVATED: February 5, 2014

LAST SUPPLEMENT RECEIVED:

February 5, 2014

EXPIRATION OF SOL: October 11, 2016 -
December 31, 2017

ELECTION CYCLES: 2012/2014

COMPLAINANT:

Dewhurst for Texas
Externally Generated

RESPONDENTS:

Kenneth A. "Buddy" Barfield

RELEVANT STATUTES:

2 U.S.C. § 432(c)
2 U.S.C. § 434(b)
2 U.S.C. § 439a(b)
2 U.S.C. § 441a(a)
2 U.S.C. § 441f
2 U.S.C. § 441i(e)
11 C.F.R. § 102.9
11 C.F.R. § 104.3
11 C.F.R. § 113.1(g)

INTERNAL REPORTS CHECKED:

Disclosure Reports

AGENCIES CHECKED:

I. INTRODUCTION

The Complaint in this matter alleges that Kenneth A. "Buddy" Barfield made approximately \$1.2 million in unauthorized disbursements while serving as the campaign manager and assistant treasurer for Dewhurst for Texas (the "Committee" or "DFT"). The Committee filed a Complaint against Barfield, detailing its investigation into Barfield's embezzlement and the Committee's reporting irregularities as a result of Barfield's efforts to conceal his activity.²

According to the Complaint, Barfield was a political consultant for the Committee when it organized in July 2011, became its campaign manager in October 2011, and assistant treasurer on October 31, 2012. From September 2011 through December 2012, Barfield used fraudulent invoices from his consulting firm, Alexander Consulting Group, LLC ("AGC"), to embezzle \$1.2 million from the Committee. He then used approximately \$83,000 in combined AGC and personal funds to pay DFT expenses. Barfield further directed the Dewhurst State Committee to pay \$474,000 toward Committee expenses and obligations that it could not cover as a result of his thefts.³ To disguise his activities, Barfield provided false financial information to DFT, which in turn submitted false disclosure reports to the Commission, one of which included a contribution made in the name of another at Barfield's direction.⁴

² See Compl. (Nov. 6, 2013). The Complaint in this matter is a resubmission of a previous submission that the Committee filed on July 30, 2013, in connection with its *sua sponte* process, describing Barfield as the respondent and alleging that he violated the Act. See Letter from Curt E. Beck, Assist. Treasurer, Dewhurst for Texas, to Jeff S. Jordan, FEC (Nov. 4, 2013) (noting that Dewhurst for Texas "is filing the attached submission as a complaint for purposes of the Commission's enforcement process with Mr. Barfield named as the respondent").

³ Compl. at 5-6, 7-8; *id.*, Exs. B, D-1 to D-4. According to the Complaint, Barfield deposited a portion of the stolen funds into the Dewhurst State Committee account. *Id.* at 12-13; *id.*, Exs. K, L.

⁴ *Id.* at 8-9, 12, 14-15; *id.*, Exs. E-1, G, J-1.

1 In December 2012, the Committee discovered Barfield's embezzlement and confronted
2 him. He acknowledged his conduct and agreed that he needed to repay DFT funds.⁵

3 Through counsel, Barfield filed a Response to the Complaint. The Response does not
4 address the allegations, but indicates that Barfield entered into a settlement agreement with DFT
5 and the Dewhurst State Committee for \$3.75 million.⁶ The Response further notes that Barfield
6 expects that local law enforcement will criminally prosecute the matter, and that he is willing to
7 conciliate this matter with the Commission.⁷

8 Based on the available information, we recommend that the Commission find reason to
9 believe that Barfield knowingly and willfully violated 2 U.S.C. §§ 432(b)-(c), 439a, 441a(a),
10 441f, and 441i(e). We further recommend that the Commission authorize compulsory process as
11 needed to assist in our proposed investigation of the matter. Finally, we recommend that the
12 Commission find no reason to believe that Barfield violated 2 U.S.C. § 434(b).

13 II. FACTUAL AND LEGAL ANALYSIS

14 A. Facts

15 1. Barfield's Embezzlement Scheme

16 David Dewhurst is currently Lieutenant Governor for Texas. In 2012, Dewhurst was an
17 unsuccessful candidate in Texas for the United States Senate.⁸ DFT was Dewhurst's authorized
18 campaign committee for the primary and run-off elections related to that candidacy. DFT filed

⁵ Compl. at 5.

⁶ See Resp. (Dec. 2, 2013). DFT and the State Committee filed a civil suit in state court naming Barfield and several businesses that he owned as defendants. The parties entered into a settlement agreement in October 2013 that required Barfield to repay DFT and the State Committee \$3,750,000 and conveyed Barfield's home to DFT and the State Committee through a trust. See *id.* at 1.

⁷ *Id.* at 2.

⁸ Compl. at 2.

1 its Statement of Organization with the Commission on July 19, 2011.⁹ Dewhurst's state
2 campaign is supported by the David Dewhurst Committee (the "State Committee"), a candidate
3 committee registered with the Texas Ethics Commission.¹⁰ Kenneth "Buddy" Barfield is a Texas
4 Republican strategist with a lengthy history as a political consultant and campaign advisor to
5 candidates and officeholders. He served as the 2010 campaign manager and executive director
6 for Dewhurst's state committee.¹¹

7 Carlos Hamilton is DFT's treasurer and has served in that role since DFT was formed.
8 Jim Bognet served as both the assistant treasurer and campaign manager when DFT was
9 formed.¹² DFT hired Barfield as a political consultant at the outset of the Senate campaign, and
10 he later replaced Bognet as campaign manager in October 2011.¹³ Rebekah Balciunas, DFT's
11 office manager, replaced Bognet as assistant treasurer in January 2012 and remained in that role
12 until she left the Committee in October 2012, at which point Barfield assumed the position of
13 assistant treasurer.¹⁴

14 According to the Complaint, DFT's treasurer was not involved in the Committee's day-
15 to-day financial affairs or bookkeeping.¹⁵ Instead, Balciunas handled daily operations in her role
16 as office manager, which included generating payments and assisting in the preparation of DFT's

⁹ DFT, Statement of Organization (July 19, 2011).

¹⁰ Compl. at 1.

¹¹ *Id.* at 3, Ex. H-1 at 14.

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ *Id.* Curt Beck replaced Barfield after the Committee discovered the misappropriations.

¹⁵ Supp. Submission, Pre-MUR 561(Dewhurst) (Feb. 5, 2014).

1 disclosure reports.¹⁶ The accounting firm of Millan & Company led by Richard Millan prepared
2 the Committee's monthly financial statements, disbursements, and loan and debts schedules for
3 the Committee's disclosure reports and, according to the Complaint, conducted a monthly
4 reconciliation between its bank statements, accounting records, and Commission disclosure
5 reports.¹⁷ DFT's Finance Department received and deposited all receipts but had no banking
6 authority; it copied Millan and Company with deposits.¹⁸ According to the Complaint, only two
7 individuals had signatory authority for DFT's bank accounts: DFT's campaign manager and
8 Millan.¹⁹ The campaign manager also had authority to approve and authorize the payment of
9 invoices.²⁰

10 As campaign manager and consultant to DFT, Barfield provided legitimate consulting
11 and administrative services to the committee, and DFT paid Barfield \$17,500 each month for
12 those services.²¹ That amount was intended also to cover the services of Barfield's
13 administrative assistant, Theresa Wheatley.²²

14 Barfield's embezzlement scheme apparently commenced almost immediately after he
15 became the committee's campaign manager and DFT added him as signatory to its bank

¹⁶ See Compl. at 3.

¹⁷ *Id.* at 2-3. The State Committee also retained Millan & Company.

¹⁸ Supp. Submission at 1.

¹⁹ Compl. at 6 n.9.

²⁰ *Id.*

²¹ *Id.* at 6. Altogether, DFT paid Barfield \$175,000 for legitimate services to the campaign. See *id.* at 7, Ex. A-1.

²² *Id.* at 7.

1 accounts.²³ Beginning October 10, 2011, and continuing through July 27, 2012, Barfield began
2 to direct Wheatley to create fraudulent invoices to DFT from Alexander Group Consulting, LLC
3 (“AGC”), a consulting company Barfield owned and operated.²⁴ During this period, AGC
4 submitted 24 fraudulent invoices to DFT, ostensibly for services such as strategic mailers,
5 postage, polling, so-called “robo calls,” marketing and advertising, and media expenses. The
6 invoices ranged from \$7,850 to approximately \$250,000, and AGC provided none of the
7 identified services.²⁵ In his capacity as DFT’s campaign manager, Barfield then approved the
8 expenditures to AGC and directed DFT staff to pay the invoices by check or wire transfer.²⁶
9 Over the course of 10 months, Barfield stole nearly \$1.2 million from the Committee.²⁷

As a result of Barfield's substantial embezzlement, DFT became unable to pay its obligations. Barfield turned to the State Committee as a source of funds. Barfield again directed Wheatley to prepare false invoices. Wheatley prepared invoices from actual DFT vendors, but seeking payment from the Dewhurst State Committee.²⁸ From September 11 through December 4, 2012, Barfield directed Wheatley to create an additional 24 fraudulent invoices made out to the State Committee for services including media, website and fundraising consulting, travel, and survey research and polling in amounts ranging from approximately

²³ *Id.* at 7 n.9. The DFT civil suit alleges, however, that Barfield's embezzlement scheme began in 2010. *See id.*, Ex. H-1 at 5 n.16.

²⁴ Compl. at 6 n.8. Because AGC elected partnership treatment with the IRS, *see* Supp. Submission at 2, the Commission treats AGC as a partnership for purposes of the Act. *See* 11 C.F.R. § 110.1(g)(2).

²⁵ Compl. at 6, Ex. B-1.

26 *Id.* at 6-7.

²⁷ See *id.* at 6-7; see also *id.* Ex. B-1. According to the Complaint, included in this total is \$502,650 of funds embezzled from DFT and then deposited into the State Committee account. See *id.* at 15-16.

28 *Id.* at 7; Ex. C.

1 \$1,700 to \$90,000.²⁹ Barfield approved payment for the supposed invoices to the State
2 Committee and directed the accounting firm to issue checks from the State Committee's
3 account.³⁰ In this manner the State Committee ultimately paid approximately \$474,000 of DFT's
4 federal obligations.³¹

5 To further conceal DFT's losses, in some instances Barfield also paid Committee
6 expenses with personal and AGC funds. DFT's internal investigation uncovered that between
7 September 2011 and September 2012 Barfield and AGC paid a combined \$83,000 in the
8 Committee's expenses.³² Most of those payments were listed as monthly consulting fees in
9 excess of the usual \$17,500 monthly payment to Barfield.³³

10 2. DFT's Discovery and Investigation of the Embezzlement

11 The Committee discovered the embezzlement in December 2012 and confronted Barfield
12 who "indicat[ed] that he thought he needed to repay \$686,000."³⁴ DFT reviewed the State
13 Committee and its financial records and interviewed several DFT employees.³⁵ DFT determined
14 that Barfield misappropriated approximately \$1.2 million from the Committee and \$3.5 million

²⁹ See *id.*

³⁰ See *id.* The Complaint and Submission note that Barfield served as executive director of the State Committee but provides no further details concerning his authority to disburse State Committee funds.

³¹ See *id.* DFT amended its 2012 October Quarterly and Year End Reports to disclose debts incurred to the State Committee.

³² *Id.* at 7, Ex. D-1. Barfield paid \$6,000 from his personal checking account and the remaining funds from AGC's account.

³³ *Id.* AGC also made a single payment in the amount of \$35,786.84 to Dewhurst's personal assistant as a reimbursement to her for the use of a personal credit card to pay for DFT's primary run-off election night party. See *id.* at 9. AGC lacked sufficient funds to pay that amount, however, and therefore obtained \$37,886.84 from the State Committee before issuing its payment to Dewhurst's assistant. See *id.*

³⁴ *Id.* at 4-5.

³⁵ Supp. Submission at 2.

1 from the State Committee and further caused the State Committee to pay in excess of \$1 million
2 of DFT's expenses and obligations.³⁶ Barfield's theft and his efforts to conceal it also caused the
3 Committee unwittingly to report falsely that it had refunded \$725,000 in general election
4 contributions and received a \$725,000 contribution from Dewhurst on its 2012 October
5 Quarterly Report.³⁷ As a result of its investigation, DFT amended that report to eliminate the
6 false \$725,000 contribution and general election refunds, while disclosing previously-unreported
7 vendor debts totaling \$1,014,045.22³⁸ and \$38,793.87 in debts to the State Committee.³⁹

8 Finally, DFT also discovered that Wheatley had contributed \$5,000 in her name to the
9 Committee using funds that Barfield transferred to her account from AGC for that purpose.⁴⁰ As
10 to that contribution, Wheatley explained that the Committee lacked sufficient funds to pay a
11 vendor, so Barfield transferred the \$5,000 from AGC to Wheatley, who then contributed it to the
12 Committee.⁴¹

13 B. Legal Analysis

14 1. Recordkeeping and Reporting Violations

15 Under the Act and Commission regulations, a committee must maintain an accurate
16 account of its receipts, disbursements, and cash-on-hand balances and must accurately report

36 Compl. at 5.

37 *See id.*

38 *See id.*, Ex. G. The Committee does not dispute that these were legitimate campaign expenses — it contends only that Barfield concealed them.

39 *Id.* at 17-18; *see* Amended 2012 October Quarterly Report (Feb. 4, 2013).

40 Compl. at 12; *see id.*, Exs. J-1 to J-3.

41 *See id.*

1 those amounts in its public filings with the Commission.⁴² Committees must keep an account of
2 the name and address of every person to whom a disbursement is made, together with the date,
3 amount, and purpose of the disbursement, and a receipt, invoice, or cancelled check for any
4 disbursements in excess of \$200.⁴³ The Commission has further recognized that these
5 obligations apply to the treasurer of the committee "or an agent authorized by the treasurer to
6 receive contributions and make expenditures."⁴⁴

7 The Act also prescribes additional monetary penalties for violations that are knowing and
8 willful.⁴⁵ A violation of the Act is knowing and willful if the "acts were committed with full
9 knowledge of all the relevant facts and a recognition that the action is prohibited by law."⁴⁶ This
10 does not require proving knowledge of the specific statute or regulation the respondent allegedly
11 violated.⁴⁷ Rather, it is sufficient to demonstrate that a respondent "acted voluntarily and was
12 aware that his conduct was unlawful."⁴⁸ This awareness may be shown through circumstantial
13 evidence from which the respondents' unlawful intent reasonably may be inferred.⁴⁹ For

⁴² See 2 U.S.C. §§ 432(c), 434(b); 11 C.F.R. §§ 104.3, 104.14(d).

⁴³ 2 U.S.C. § 432(c)(5), (d); 11 C.F.R. § 102.9(a), (b)(2).

⁴⁴ 11 C.F.R. § 102.9.

⁴⁵ See 2 U.S.C. §§ 437g(a)(5)(B), 437g(d).

⁴⁶ 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

⁴⁷ *United States v. Danielczyk*, 917 F. Supp. 2d 573, 578 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

⁴⁸ *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

⁴⁹ *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants' convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

1 example, a person's awareness that an action is prohibited may be inferred from "the [person's]
2 elaborate scheme for disguising . . . political contributions."⁵⁰

3 In his capacity as campaign manager for the Committee, Barfield was authorized to
4 receive contributions and make expenditures.⁵¹ And Barfield's substantial misappropriation of
5 DFT funds relied upon his fraudulent creation of false records concerning expenditures and
6 contributions and other efforts to conceal his conduct, which in turn undermined the
7 Committee's ability to maintain accurate records as required by law.⁵² Accordingly, we
8 recommend that the Commission find reason to believe that Barfield knowingly and willfully
9 violated 2 U.S.C. § 432(c)(5). Because Barfield did not sign and file any disclosure reports on
10 behalf of DFT, however, we recommend that the Commission find no reason to believe that
11 Barfield violated 2 U.S.C. § 434(b).

12 2. Personal Use and Commingling Violations

13 The Act and Commission regulations require that all funds of a political committee must
14 be "segregated from, and may not be commingled with, the personal funds of any individual,"⁵³
15 and prohibit any person from converting contributions to a federal candidate for personal use.⁵⁴
16 "Personal use" means any use of funds in a campaign account of a federal candidate to fulfill a

⁵⁰ *Id.* at 214-15. As the *Hopkins* court noted, "It has long been recognized that 'efforts at concealment [may] be reasonably explainable only in terms of motivation to evade' lawful obligations." *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

⁵¹ *See, e.g.* Compl. at 6, 10, Exs. B-1, B-2.

⁵² For instance, as noted above, Barfield approved the receipt of prohibited contributions in Wheatley's name when he himself was the true source of those contributions. He provided false records to the Committee that led it to inaccurately report \$1.2 million in disbursements to the Commission. In addition, he withheld from the Committee unpaid vendor debts and obligations in excess of \$1 million and provided the Committee false information that caused it to disclose inaccurately the receipt of a \$725,000 contribution and the refund of \$725,000 in general election contributions.

⁵³ 2 U.S.C. § 432(b)(3); 11 C.F.R. § 102.15.

⁵⁴ 2 U.S.C. § 439a(b)(1).

1 commitment, obligation, or expense of any person that would exist irrespective of the
2 candidate's campaign duties.⁵⁵ The Act and Commission regulations set forth a non-exhaustive
3 list of examples that constitute personal use *per se*, such as mortgage payments, tuition
4 payments, non-campaign-related automobile expenses, and health club dues.⁵⁶ For items not on
5 this list, the Commission determines on a case-by-case basis whether an expense would fall
6 within the definition of "personal use."⁵⁷

7 The present record amply demonstrates that Barfield knowingly and willfully violated the
8 Act's commingling and personal use provisions. From October 2011 through July 2012,
9 Barfield made 24 unauthorized disbursements of DFT funds to AGC ranging from \$7,850 to
10 \$255,780, totaling nearly \$1.2 million dollars. Barfield directed his assistant to craft fraudulent
11 invoices from AGC, his personal business-venture, for campaign services that AGC had not
12 provided. And in his capacity as campaign manager, Barfield himself then approved each of the
13 invoices to AGC and directed the Committee accountant to pay them. In the related civil
14 litigation, Barfield admitted that he stole millions from DFT and the State Committee for
15 personal and family expense and to "fund his various business ventures."⁵⁸ Moreover, in
16 executing the scheme, Barfield directed that the Committee wire funds to AGC's bank account to
17 pay the fraudulent invoices, and AGC's ledgers show deposits that correlate to the Committee's
18 payments for those invoices.⁵⁹ Barfield then wired some of the funds AGC received from

⁵⁵ See *id.* § 439a(b)(2).

⁵⁶ *Id.* § 439a(b)(2)(A)-(I); 11 C.F.R. § 113.1(g).

⁵⁷ 11 C.F.R. § 113.1(g)(1)(ii).

⁵⁸ Resp., Ex. B.

⁵⁹ See Compl., Exs. B-1, J-2, L-2.

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1 AGC's account to his personal accounts, and issued AGC checks to himself drawing on those
2 funds.⁶⁰ Finally, Barfield's knowledge that the invoices were fraudulent and his efforts to
3 conceal the scheme together reflect that he was aware that his actions were prohibited by law.
4 Indeed, when confronted, Barfield conceded that "he thought he needed to repay \$686,000."⁶¹
5 For all these reasons, we recommend that the Commission find reason to believe that Barfield
6 knowingly and willfully violated 2 U.S.C. §§ 432(b)(3) and 439a(b).

7 3. Contributions in the Name of Another

8 The Act provides that no person shall make a contribution in the name of another
9 person.⁶² It also constitutes a violation of the Act to help or assist any person in making a
10 contribution in the name of another.⁶³ Here, Barfield wired \$5,000 from AGC's account to
11 Wheatley's personal account on November 27, 2012, the same day she made two \$2,500
12 contributions to the Committee.⁶⁴ Wheatley presumably did so at Barfield's instruction.
13 Barfield's Response does not address or seek to rebut this allegation. Accordingly, we
14 recommend that the Commission find reason to believe that Barfield knowingly and willfully
15 violated 2 U.S.C. § 441f.

⁶⁰ See *id.*, Ex. L-2. This ledger also shows numerous wire transfers to other individuals with the surname Barfield.

⁶¹ *Id.* at 4-5. The Complaint notes that Barfield met with DFT staff on numerous occasions during December 2012 to "determine the amount of money that Mr. Barfield had misappropriated from each committee," and also provided an estimate of the committee's obligations resulting from Barfield's embezzlement. See *id.*, Ex. B-3.

⁶² 2 U.S.C. § 441f.

⁶³ 11 C.F.R. § 110.4(b)(iii).

⁶⁴ See Compl., Ex. J-1 (disclosing contributions from Theresa Wheatley); *id.*, Ex. J-2. DFT also provided with its submission a copy of a letter to the United States Treasury indicating that the Committee disgorged \$5,000 because "[t]hese funds represent potential violation of the [Act]." Compl., Ex. J-3.

4. Excessive In-Kind Contributions to DFT

The Act's individual contribution limit during the 2012 election cycle was \$2,500 per candidate per election.⁶⁵ A contribution includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office is a contribution.⁶⁶ "Anything of value" includes in-kind contributions.⁶⁷ Barfield made the maximum contribution permitted under his individual contribution limit on August 31, 2012, when he contributed \$5,000 to the Committee for the 2012 Republican primary and runoff elections. But in seeking to conceal his theft from the Committee, Barfield made additional unreported, in-kind excessive contributions to the Committee that totaled approximately \$88,000.

Barfield used funds from both his personal account and that of AGC to pay \$25,000 in 2011 and \$73,000 in 2012 primarily for Committee consultants.⁶⁸ The Complaint provides that "Barfield owns, operated, and is the managing member of AGC," a limited liability company ("LLC") that has elected partnership treatment in its filings with the IRS.⁶⁹ Thus, under Commission regulations any AGC contribution is proportionately attributed to each partner.⁷⁰ Here, because the LLC is comprised of a single natural person, all such contributions are

⁶⁵ 2 U.S.C. § 441a(a)(1); 11 C.F.R. § 110.1.

⁶⁶ 2 U.S.C. § 431(8)(A)(i).

⁶⁷ 11 C.F.R. § 100.52(d)(1).

⁶⁸ See Compl., Ex. D-1. The total for 2012 includes his \$5,000 contribution made in the name of Wheatley, discussed above.

⁶⁹ Compl. at 6 n.8; Supp. Submission at 2.

⁷⁰ See 11 C.F.R. § 110.1(e)(1); (g)(2).

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1 attributed to Barfield.⁷¹ As such, there is reason to believe that Barfield made excessive
2 contributions in violation of the Act. Further, Barfield's efforts to conceal his excessive
3 contributions by directing AGC's payment to Committee vendors — in addition to his
4 contribution in the name of another — reflects that he sought to evade the Act's individual
5 limits. Accordingly, we recommend that the Commission find reason to believe that Barfield
6 knowingly and willfully violated 2 U.S.C. § 441a(a)(1).

7 5. Soft Money Violation

8 The Act provides that federal candidates and officeholders, their agents, and entities
9 directly or indirectly established, financed, maintained, or controlled by them are prohibited from
10 soliciting, receiving, directing, transferring, or spending nonfederal funds in connection with an
11 election for federal office.⁷² The Act also generally prohibits such entities from soliciting,
12 receiving, directing, transferring, or spending funds in connection with any election other than an
13 election for federal office or disbursing funds in connection with such an election, unless those
14 funds are within the amount and source limits of the Act.⁷³ Texas law generally prohibits
15 corporations and labor organizations from making political contributions, but allows unlimited
16 individual contributions.⁷⁴ By paying Committee debts and obligations with nonfederal funds,
17 Barfield therefore violated 2 U.S.C. § 441i(e)(1)(A).

⁷¹ *See id.* § 110.1(g)(4).

⁷² 2 U.S.C. § 441i(e)(1)(A). The Commission defined the term "agent" in the regulation addressing the soft money ban as an individual with express or implied actual authority to engage in specific activities. 11 C.F.R. § 300.2(b). For a federal candidate or office holder, this would include an individual with the ability to solicit, receive, direct, transfer, or spend funds in connection with any election.

⁷³ *See* 2 U.S.C. § 441i(e)(1)(B).

⁷⁴ TEX. ELEC. CODE ANN. § 253.094 (West 2009).

1 Barfield was an agent of the Committee with the actual authority to receive, direct, and
2 spend funds in connection with a federal election. Barfield directed the use of nonfederal funds
3 from the State Committee to pay an authorized federal committee's debts and obligations. The
4 State Committee's reports to the Texas Ethics Commission indicate that it received contributions
5 that exceed the Act's individual limits, but are permissible under state law. Therefore, the funds
6 used by Barfield to pay DFT's debts and obligations did not conform to the Act's limitation and
7 reporting requirements. And because Barfield used counterfeit means to hide the source of the
8 funds he used to pay the Committee's debts, the record suggests that he engaged in this conduct
9 knowing it was prohibited by law. We therefore recommend that the Commission find reason to
10 believe that Barfield knowingly and willfully violated 2 U.S.C. § 441i(e)(1)(A).

11 **III. INVESTIGATION**

12 Although the information submitted in connection with the Complaint provides a
13 substantial record concerning some of the alleged violations, the full scope of Barfield's scheme,
14 including his commingling of Committee funds, and the extent to which Wheatley or any other
15 individuals associated with the Committee may have knowingly participated in the scheme
16 remain uncertain. Accordingly, we conclude that pre-probable conciliation would be premature,
17 and we propose an investigation to address those outstanding questions. Although we will
18 endeavor to obtain the necessary information through the voluntary compliance of witnesses and

19 the Respondent, given the pendency of a parallel criminal proceeding concerning some of the
20 same allegations, we recommend that the Commission approve compulsory process as necessary.

21 **IV. RECOMMENDATIONS**

- 22 1. Find reason to believe that Kenneth Barfield knowingly and willfully violated
23 2 U.S.C. §§ 432(b), 432(c), 439a, 441a(a); 441f and 441i(e).
- 24 2. Find no reason to believe that Kenneth Barfield violated 2 U.S.C. § 434(b).
- 25


3. Approve the attached Factual and Legal Analysis.
4. Authorize the use of compulsory process, including the issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary.
5. Approve the appropriate letters.

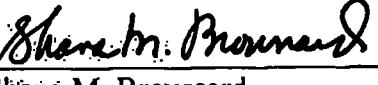
Date

6/5/14

BY:


Daniel A. Petalas
Associate General Counsel for Enforcement


William A. Powers
Assistant General Counsel


Shana M. Broussard
Attorney

Attachment:
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Kenneth A. "Buddy" Barfield MUR 6761

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission ("the Commission") by Dewhurst for Texas and Dr. Carlos Hamilton in his official capacity as treasurer. *See* 2 U.S.C. § 437g(a)(1).

II. INTRODUCTION

The Complaint in this matter alleges that Kenneth A. "Buddy" Barfield made approximately \$1.2 million in unauthorized disbursements while serving as the campaign manager and assistant treasurer for Dewhurst for Texas (the "Committee" or "DFT"). The Committee filed a Complaint against Barfield, detailing its investigation into Barfield's embezzlement and the Committee's reporting irregularities as a result of Barfield's efforts to conceal his activity.¹

According to the Complaint, Barfield was a political consultant for the Committee when it organized in July 2011, became its campaign manager in October 2011, and assistant treasurer on October 31, 2012. From September 2011 through December 2012, Barfield used fraudulent invoices from his consulting firm, Alexander Consulting Group, LLC ("AGC"), to embezzle \$1.2 million from the Committee. He then used approximately \$83,000 in combined AGC and personal funds to pay DFT expenses. Barfield further directed the Dewhurst State Committee to pay \$474,000 toward Committee expenses and obligations that it could not cover as a result of

¹ *See* Compl. (Nov. 6, 2013). *See* Letter from Curt E. Beck, Assist. Treasurer, Dewhurst for Texas, to Jeff S. Jordan, FEC (Nov. 4, 2013) (noting that Dewhurst for Texas "is filing the attached submission as a complaint for purposes of the Commission's enforcement process with Mr. Barfield named as the respondent").

1 his thefts.² To disguise his activities, Barfield provided false financial information to DFT,
2 which in turn submitted false disclosure reports to the Commission, one of which included a
3 contribution made in the name of another at Barfield's direction.³

4 In December 2012, the Committee discovered Barfield's embezzlement and confronted
5 him. He acknowledged his conduct and agreed that he needed to repay DFT funds.⁴

6 Through counsel, Barfield filed a Response to the Complaint. The Response does not
7 address the allegations, but indicates that Barfield entered into a settlement agreement with DFT
8 and the Dewhurst State Committee for \$3.75 million.⁵ The Response further notes that Barfield
9 expects that local law enforcement will criminally prosecute the matter, and that he is willing to
10 conciliate this matter with the Commission.⁶

11 Based on the available information, the Commission finds reason to believe that Barfield
12 knowingly and willfully violated 2 U.S.C. §§ 432(b)-(c), 439a, 441a(a), 441f, and 441i(e). In
13 addition, the Commission finds no reason to believe that Barfield violated 2 U.S.C. § 434(b).

14 II. FACTUAL AND LEGAL ANALYSIS

15 A. Facts

16 1. Barfield's Embezzlement Scheme

17 David Dewhurst is currently Lieutenant Governor for Texas. In 2012, Dewhurst was an

² ~~Compl. at 5-6, 7-8; id., Exs. B, D-1 to D-4. According to the Complaint, Barfield deposited a portion of the~~
stolen funds into the Dewhurst State Committee account. *Id.* at 12-13; *id.*, Exs. K, L.

³ *Id.* at 8-9, 12, 14-15; *id.*, Exs. E-1, G, J-1.

⁴ Compl. at 5.

⁵ See Resp. (Dec. 2, 2013). DFT and the State Committee filed a civil suit in state court naming Barfield and several businesses that he owned as defendants. The parties entered into a settlement agreement in October 2013 that required Barfield to repay DFT and the State Committee \$3,750,000 and conveyed Barfield's home to DFT and the State Committee through a trust. See *id.* at 1.

⁶ *Id.* at 2.

1 unsuccessful candidate in Texas for the United States Senate.⁷ DFT was Dewhurst's authorized
2 campaign committee for the primary and run-off elections related to that candidacy. DFT filed
3 its Statement of Organization with the Commission on July 19, 2011.⁸ Dewhurst's state
4 campaign is supported by the David Dewhurst Committee (the "State Committee"), a candidate
5 committee registered with the Texas Ethics Commission.⁹ Kenneth "Buddy" Barfield is a Texas
6 Republican strategist with a lengthy history as a political consultant and campaign advisor to
7 candidates and officeholders. He served as the 2010 campaign manager and executive director
8 for Dewhurst's state committee.¹⁰

9 Carlos Hamilton is DFT's treasurer and has served in that role since DFT was formed.
10 Jim Bognet served as both the assistant treasurer and campaign manager when DFT was
11 formed.¹¹ DFT hired Barfield as a political consultant at the outset of the Senate campaign, and
12 he later replaced Bognet as campaign manager in October 2011.¹² Rebekah Balciunas, DFT's
13 office manager, replaced Bognet as assistant treasurer in January 2012 and remained in that role
14 until she left the Committee in October 2012, at which point Barfield assumed the position of
15 assistant treasurer.¹³

16 DFT's treasurer was not involved in the Committee's day-to-day financial affairs or
17 bookkeeping. Instead, Balciunas handled daily operations in her role as office manager, which

⁷ Compl. at 2.

⁸ DFT, Statement of Organization (July 19, 2011).

⁹ Compl. at 1.

¹⁰ *Id.* at 3, Ex. H-1 at 14.

¹¹ *Id.* at 3.

¹² *Id.*

¹³ *Id.* Curt Beck replaced Barfield after the Committee discovered the misappropriations.

1 included generating payments and assisting in the preparation of DFT's disclosure reports.¹⁴ The
2 accounting firm of Millan & Company led by Richard Millan prepared the Committee's monthly
3 financial statements, disbursements, and loan and debts schedules for the Committee's disclosure
4 reports and, according to the Complaint, conducted a monthly reconciliation between its bank
5 statements, accounting records, and Commission disclosure reports.¹⁵ DFT's Finance
6 Department received and deposited all receipts but had no banking authority; it copied Millan
7 and Company with deposits. According to the Complaint, only two individuals had signatory
8 authority for DFT's bank accounts: DFT's campaign manager and Millan.¹⁶ The campaign
9 manager also had authority to approve and authorize the payment of invoices.¹⁷

10 As campaign manager and consultant to DFT, Barfield provided legitimate consulting
11 and administrative services to the committee, and DFT paid Barfield \$17,500 each month for
12 those services.¹⁸ That amount was intended also to cover the services of Barfield's
13 administrative assistant, Theresa Wheatley.¹⁹

14 Barfield's embezzlement scheme apparently commenced almost immediately after he
15 became the committee's campaign manager and DFT added him as signatory to its bank
16 accounts.²⁰ Beginning October 10, 2011, and continuing through July 27, 2012, Barfield began

¹⁴ See Compl. at 3.

¹⁵ *Id.* at 2-3. The State Committee also retained Millan & Company.

¹⁶ Compl. at 6 n.9.

¹⁷ *Id.*

¹⁸ *Id.* at 6. Altogether, DFT paid Barfield \$175,000 for legitimate services to the campaign. See *id.* at 7, Ex. A-1.

¹⁹ *Id.* at 7.

²⁰ *Id.* at 7 n.9. The DFT civil suit alleges, however, that Barfield's embezzlement scheme began in 2010. See *id.*, Ex. H-1 at 5 n.16.

1 to direct Wheatley to create fraudulent invoices to DFT from Alexander Group Consulting, LLC
2 ("AGC"), a consulting company Barfield owned and operated.²¹ During this period, AGC
3 submitted 24 fraudulent invoices to DFT, ostensibly for services such as strategic mailers,
4 postage, polling, so-called "robo calls," marketing and advertising, and media expenses. The
5 invoices ranged from \$7,850 to approximately \$250,000, and AGC provided none of the
6 identified services.²² In his capacity as DFT's campaign manager, Barfield then approved the
7 expenditures to AGC and directed DFT staff to pay the invoices by check or wire transfer.²³
8 Over the course of 10 months, Barfield stole nearly \$1.2 million from the Committee.²⁴

9 As a result of Barfield's substantial embezzlement, DFT became unable to pay its
10 obligations. Barfield turned to the State Committee as a source of funds. Barfield again directed
11 Wheatley to prepare false invoices. Wheatley prepared invoices from actual DFT vendors, but
12 seeking payment from the Dewhurst State Committee.²⁵ From September 11 through
13 December 4, 2012, Barfield directed Wheatley to create an additional 24 fraudulent invoices
14 made out to the State Committee for services including media, website and fundraising
15 consulting, travel, and survey research and polling in amounts ranging from approximately
16 \$1,700 to \$90,000.²⁶ Barfield approved payment for the supposed invoices to the State
17 Committee and directed the accounting firm to issue checks from the State Committee's

²¹ Compl. at 6 n.8. Because AGC elected partnership treatment with the IRS the Commission treats AGC as a partnership for purposes of the Act. See 11 C.F.R. § 110.1(g)(2).

²² Compl. at 6, Ex. B-1.

²³ *Id.* at 6-7.

²⁴ See *id.*; see also *id.*, Ex. B-1. According to the Complaint, included in this total is \$502,650 of funds embezzled from DFT and then deposited into the State Committee account. See *id.* at 15-16.

²⁵ *Id.* at 7; Ex. C.

²⁶ See *id.*

1 account.²⁷ In this manner the State Committee ultimately paid approximately \$474,000 of DFT's
2 federal obligations.²⁸

3 To further conceal DFT's losses, in some instances Barfield also paid Committee
4 expenses with personal and AGC funds. DFT's internal investigation uncovered that between
5 September 2011 and September 2012 Barfield and AGC paid a combined \$83,000 in the
6 Committee's expenses.²⁹ Most of those payments were listed as monthly consulting fees in
7 excess of the usual \$17,500 monthly payment to Barfield.³⁰

8 2. DFT's Discovery and Investigation of the Embezzlement

9 The Committee discovered the embezzlement in December 2012 and confronted Barfield
10 who "indicat[ed] that he thought he needed to repay \$686,000."³¹ DFT reviewed the State
11 Committee and its financial records and interviewed several DFT employees.³² DFT determined
12 that Barfield misappropriated approximately \$1.2 million from the Committee and \$3.5 million
13 from the State Committee and further caused the State Committee to pay in excess of \$1 million
14 of DFT's expenses and obligations.³³ Barfield's theft and his efforts to conceal it also caused the

²⁷ See *id.* The Complaint notes that Barfield served as executive director of the State Committee but provides no further details concerning his authority to disburse State Committee funds.

²⁸ See *id.* DFT amended its 2012 October Quarterly and Year End Reports to disclose debts incurred to the State Committee.

²⁹ *Id.* at 7, Ex. D-1. Barfield paid \$6,000 from his personal checking account and the remaining funds from AGC's account.

³⁰ *Id.* at 9. AGC also made a single payment in the amount of \$35,786.84 to Dewhurst's personal assistant as a reimbursement to her for the use of a personal credit card to pay for DFT's primary run-off election night party. See *id.* at 9. AGC lacked sufficient funds to pay that amount, however, and therefore obtained \$37,886.84 from the State Committee before issuing its payment to Dewhurst's assistant. See *id.*

³¹ *Id.* at 4-5.

³² Compl. at 4, 11.

³³ See *id.* at 5.

1 Committee unwittingly to report falsely that it had refunded \$725,000 in general election
2 contributions and received a \$725,000 contribution from Dewhurst on its 2012 October
3 Quarterly Report.³⁴ As a result of its investigation, DFT amended that report to eliminate the
4 false \$725,000 contribution and general election refunds, while disclosing previously-unreported
5 vendor debts totaling \$1,014,045.22³⁵ and \$38,793.87 in debts to the State Committee.³⁶

6 Finally, DFT also discovered that Wheatley had contributed \$5,000 in her name to the
7 Committee using funds that Barfield transferred to her account from AGC for that purpose.³⁷ As
8 to that contribution, Wheatley explained that the Committee lacked sufficient funds to pay a
9 vendor, so Barfield transferred the \$5,000 from AGC to Wheatley, who then contributed it to the
10 Committee.³⁸

11 **B. Legal Analysis**

12 **1. Recordkeeping and Reporting Violations**

13 Under the Act and Commission regulations, a committee must maintain an accurate
14 account of its receipts, disbursements, and cash-on-hand balances and must accurately report
15 those amounts in its public filings with the Commission.³⁹ Committees must keep an account of
16 the name and address of every person to whom a disbursement is made, together with the date,
17 amount, and purpose of the disbursement, and a receipt, invoice, or cancelled check for any

³⁴ See *id.*

³⁵ See *id.*, Ex. G. The Committee does not dispute that these were legitimate campaign expenses — it contends only that Barfield concealed them.

³⁶ *Id.* at 17-18; see Amended 2012 October Quarterly Report (Feb. 4, 2013).

³⁷ Compl. at 12; see *id.*, Exs. J-1 to J-3.

³⁸ See *id.*

³⁹ See 2 U.S.C. §§ 432(c), 434(b); 11 C.F.R. §§ 104.3, 104.14(d).

1 disbursements in excess of \$200.⁴⁰ The Commission has further recognized that these
2 obligations apply to the treasurer of the committee “or an agent authorized by the treasurer to
3 receive contributions and make expenditures.”⁴¹

4 The Act also prescribes additional monetary penalties for violations that are knowing and
5 willful.⁴² A violation of the Act is knowing and willful if the “acts were committed with full
6 knowledge of all the relevant facts and a recognition that the action is prohibited by law.”⁴³ This
7 does not require proving knowledge of the specific statute or regulation the respondent allegedly
8 violated.⁴⁴ Rather, it is sufficient to demonstrate that a respondent “acted voluntarily and was
9 aware that his conduct was unlawful.”⁴⁵ This awareness may be shown through circumstantial
10 evidence from which the respondents’ unlawful intent reasonably may be inferred.⁴⁶ For
11 example, a person’s awareness that an action is prohibited may be inferred from “the [person’s]
12 elaborate scheme for disguising . . . political contributions.”⁴⁷

⁴⁰ 2 U.S.C. § 432(c)(5), (d); 11 C.F.R. § 102.9(a), (b)(2).

⁴¹ 11 C.F.R. § 102.9.

⁴² See 2 U.S.C. §§ 437g(a)(5)(B), 437g(d).

⁴³ 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

⁴⁴ *United States v. Danielczyk*, 917 F. Supp. 2d 573, 578 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

⁴⁵ *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

⁴⁶ *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

⁴⁷ *Id.* at 214-15. As the *Hopkins* court noted, “It has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

1 In his capacity as campaign manager for the Committee, Barfield was authorized to
2 receive contributions and make expenditures.⁴⁸ And Barfield's substantial misappropriation of
3 DFT funds relied upon his fraudulent creation of false records concerning expenditures and
4 contributions and other efforts to conceal his conduct, which in turn undermined the
5 Committee's ability to maintain accurate records as required by law.⁴⁹ Accordingly, the
6 Commission finds reason to believe that Barfield knowingly and willfully violated 2 U.S.C.
7 § 432(c)(5). Because Barfield did not sign and file any disclosure reports on behalf of DFT,
8 however, the Commission finds no reason to believe that Barfield violated 2 U.S.C. § 434(b).

9 2. Personal Use and Commingling Violations

10 The Act and Commission regulations require that all funds of a political committee must
11 be "segregated from, and may not be commingled with, the personal funds of any individual,"⁵⁰
12 and prohibit any person from converting contributions to a federal candidate for personal use.⁵¹
13 "Personal use" means any use of funds in a campaign account of a federal candidate to fulfill a
14 commitment, obligation, or expense of any person that would exist irrespective of the
15 candidate's campaign duties.⁵² The Act and Commission regulations set forth a non-exhaustive
16 list of examples that constitute personal use *per se*, such as mortgage payments, tuition

⁴⁸ See, e.g. Compl. at 6, 10, Exs. B-1, B-2.

⁴⁹ For instance, as noted above, Barfield approved the receipt of prohibited contributions in Wheatley's name when he himself was the true source of those contributions. He provided false records to the Committee that led it to inaccurately report \$1.2 million in disbursements to the Commission. In addition, he withheld from the Committee unpaid vendor debts and obligations in excess of \$1 million and provided the Committee false information that caused it to disclose inaccurately the receipt of a \$725,000 contribution and the refund of \$725,000 in general election contributions.

⁵⁰ 2 U.S.C. § 432(b)(3); 11 C.F.R. § 102.15.

⁵¹ 2 U.S.C. § 439a(b)(1).

⁵² See *id.* § 439a(b)(2).

1 payments, non-campaign-related automobile expenses, and health club dues.⁵³ For items not on
2 this list, the Commission determines on a case-by-case basis whether an expense would fall
3 within the definition of "personal use."⁵⁴

4 The present record amply demonstrates that Barfield knowingly and willfully violated the
5 Act's commingling and personal use provisions. From October 2011 through July 2012,
6 Barfield made 24 unauthorized disbursements of DFT funds to AGC ranging from \$7,850 to
7 \$255,780, totaling nearly \$1.2 million dollars. Barfield directed his assistant to craft fraudulent
8 invoices from AGC, his personal business-venture, for campaign services that AGC had not
9 provided. And in his capacity as campaign manager, Barfield himself then approved each of the
10 invoices to AGC and directed the Committee accountant to pay them. In the related civil
11 litigation, Barfield admitted that he stole millions from DFT and the State Committee for
12 personal and family expense and to "fund his various business ventures."⁵⁵ Moreover, in
13 executing the scheme, Barfield directed that the Committee wire funds to AGC's bank account to
14 pay the fraudulent invoices, and AGC's ledgers show deposits that correlate to the Committee's
15 payments for those invoices.⁵⁶ Barfield then wired some of the funds AGC received from
16 AGC's account to his personal accounts, and issued AGC checks to himself drawing on those
17 funds.⁵⁷ Finally, Barfield's knowledge that the invoices were fraudulent and his efforts to
18 conceal the scheme together reflect that he was aware that his actions were prohibited by law.

⁵³ *Id.* § 439a(b)(2)(A)-(I); 11 C.F.R. § 113.1(g).

⁵⁴ 11 C.F.R. § 113.1(g)(1)(ii).

⁵⁵ Resp., Ex. B.

⁵⁶ See Compl., Exs. B-1, J-2, L-2.

⁵⁷ See *id.*, Ex. L-2. This ledger also shows numerous wire transfers to other individuals with the surname Barfield.

1 Indeed, when confronted, Barfield conceded that “he thought he needed to repay \$686,000.”⁵⁸

2 For all these reasons, the Commission finds reason to believe that Barfield knowingly and
3 willfully violated 2 U.S.C. §§ 432(b)(3) and 439a(b).

4 3. Contributions in the Name of Another

5 The Act provides that no person shall make a contribution in the name of another
6 person.⁵⁹ It also constitutes a violation of the Act to help or assist any person in making a
7 contribution in the name of another.⁶⁰ Here, Barfield wired \$5,000 from AGC’s account to
8 Wheatley’s personal account on November 27, 2012, the same day she made two \$2,500
9 contributions to the Committee.⁶¹ Wheatley presumably did so at Barfield’s instruction.
10 Barfield’s Response does not address or seek to rebut this allegation. Accordingly, the
11 Commission finds reason to believe that Barfield knowingly and willfully violated 2 U.S.C.
12 § 441f.

13 4. Excessive In-Kind Contributions to DFT

14 The Act’s individual contribution limit during the 2012 election cycle was \$2,500 per
15 candidate per election.⁶² A contribution includes any gift, subscription, loan, advance, or deposit
16 of money or anything of value made by any person for the purpose of influencing any election

⁵⁸ Id. at 4-5. The Complaint notes that Barfield met with DFT staff on numerous occasions during December 2012 to “determine the amount of money that Mr. Barfield had misappropriated from each committee,” and also provided an estimate of the committee’s obligations resulting from Barfield’s embezzlement. See *id.*, Ex. B-3.

⁵⁹ 2 U.S.C. § 441f.

⁶⁰ 11 C.F.R. § 110.4(b)(iii).

⁶¹ See Compl., Ex. J-1 (disclosing contributions from Theresa Wheatley); *id.*, Ex. J-2. DFT also provided with its submission a copy of a letter to the United States Treasury indicating that the Committee disgorged \$5,000 because “[t]hese funds represent potential violation of the [Act].” Compl., Ex. J-3.

⁶² 2 U.S.C. § 441a(a)(1); 11 C.F.R. § 110.1.

1 for Federal office is a contribution.⁶³ “Anything of value” includes in-kind contributions.⁶⁴
2 Barfield made the maximum contribution permitted under his individual contribution limit on
3 August 31, 2012, when he contributed \$5,000 to the Committee for the 2012 Republican primary
4 and runoff elections. But in seeking to conceal his theft from the Committee, Barfield made
5 additional unreported, in-kind excessive contributions to the Committee that totaled
6 approximately \$88,000.

7 Barfield used funds from both his personal account and that of AGC to pay \$25,000 in
8 2011 and \$73,000 in 2012 primarily for Committee consultants.⁶⁵ The Complaint provides that
9 “Barfield owns, operated, and is the managing member of AGC,” a limited liability company
10 (“LLC”).⁶⁶ AGC elected partnership treatment in its filings with the IRS. Thus, under
11 Commission regulations any AGC contribution is proportionately attributed to each partner.⁶⁷
12 Here, because the LLC is comprised of a single natural person, all such contributions are
13 attributed to Barfield.⁶⁸ As such, there is reason to believe that Barfield made excessive
14 contributions in violation of the Act. Further, Barfield’s efforts to conceal his excessive
15 contributions by directing AGC’s payment to Committee vendors — in addition to his
16 contribution in the name of another — reflects that he sought to evade the Act’s individual

⁶³ 2 U.S.C. § 431(8)(A)(i).

⁶⁴ 11 C.F.R. §100.52(d)(1).

⁶⁵ See Compl., Ex. D-1. The total for 2012 includes his \$5,000 contribution made in the name of Wheatley, discussed above.

⁶⁶ Compl. at 6 n.8.

⁶⁷ See 11 C.F.R. § 110.1(e)(1); (g)(2).

⁶⁸ See *id.* § 110.1(g)(4).

limits. Accordingly, the Commission finds reason to believe that Barfield knowingly and willfully violated 2 U.S.C. § 441a(a)(1).

5. Soft Money Violation

The Act provides that federal candidates and officeholders, their agents, and entities directly or indirectly established, financed, maintained, or controlled by them are prohibited from soliciting, receiving, directing, transferring, or spending nonfederal funds in connection with an election for federal office.⁶⁹ The Act also generally prohibits such entities from soliciting, receiving, directing, transferring, or spending funds in connection with any election other than an election for federal office or disbursing funds in connection with such an election, unless those funds are within the amount and source limits of the Act.⁷⁰ Texas law generally prohibits corporations and labor organizations from making political contributions, but allows unlimited individual contributions.⁷¹ By paying Committee debts and obligations with nonfederal funds, Barfield therefore violated 2 U.S.C. § 441i(e)(1)(A).

Barfield was an agent of the Committee with the actual authority to receive, direct, and spend funds in connection with a federal election. Barfield directed the use of nonfederal funds from the State Committee to pay an authorized federal committee's debts and obligations. The State Committee's reports to the Texas Ethics Commission indicate that it received contributions that exceed the Act's individual limits, but are permissible under state law. Therefore, the funds used by Barfield to pay DFT's debts and obligations did not conform to the Act's limitation and

⁶⁹ 2 U.S.C. § 441i(e)(1)(A). The Commission defined the term "agent" in the regulation addressing the soft money ban as an individual with express or implied actual authority to engage in specific activities. 11 C.F.R. § 300.2(b). For a federal candidate or office holder, this would include an individual with the ability to solicit, receive, direct, transfer, or spend funds in connection with any election.

⁷⁰ See 2 U.S.C. § 441i(e)(1)(B).

⁷¹ TEX. ELEC. CODE ANN. § 253.094 (West 2009).

- 1 reporting requirements. And because Barfield used counterfeit means to hide the source of the
- 2 funds he used to pay the Committee's debts, the record suggests that he engaged in this conduct
- 3 knowing it was prohibited by law. Therefore, the Commission finds reason to believe that
- 4 Barfield knowingly and willfully violated 2 U.S.C. § 441i(e)(1)(A).